



## MISSOURI DEPARTMENT OF TRANSPORTATION BID GUIDELINES AND DOCUMENTATION

### REQUEST FOR BID

It is the vendor's responsibility to read and comply with all conditions, specifications, and instructions outlined in this document. This document and any subsequent attachments shall supersede all confirmation forms, receipts, or any other paperwork needed to secure materials, equipment, or services.

TODAY'S DATE: JANUARY 20, 2011	<b>BID DUE BY (DATE AND TIME):</b> FEBRUARY 8, 2011 @ 1:00 PM CENTRAL TIME	F.O.B. REQUIREMENTS: DESTINATION (SEE DELIVERY LOCATIONS BELOW)
DELIVERY TIME WILL BE COORDINATED BETWEEN MODOT AND THE AWARDED VENDOR(S), AS DETAILED HEREIN.	<b>Bid # D211-046-R2</b>  THIS BID # SHOULD BE REFERENCED ON ALL MAILING LABELS, ENVELOPES, AND ANY OTHER CORRESPONDENCE.	BUYER NAME: WILLIAM D. "BILL" NOYES, CPPO, CPPB SENIOR PROCUREMENT AGENT PHONE NUMBER: (660)-385-8245 <b>NO RESPONSES ACCEPTED BY FAX</b>
Bid Delivery/Mailing Address: Missouri Department of Transportation – District 2 General Services (Procurement) Division 902 North Missouri Street P.O. Box 8 Macon, MO. 63552		Refer to the delivery locations listed herein. <b>Deliveries to be completed by April 29, 2011.</b> Specific start dates will be communicated to the awarded vendors as we prefer to have only one vendor hauling at a time to keep tickets and records accurate at the Thomas Hill Power Plant.

### SCOPE OF WORK

MoDOT is seeking bids from vendors who can provide hauling services to move cinder materials from the Thomas Hill Power Plant in Randolph County (4461 Highway F, Clifton Hill, MO 65244) to the various District 2 locations (maintenance buildings) listed herein.

Cinder materials are to be hauled to each location listed, at a **minimum rate of 500 tons per day**. The unit price bid per ton for each location shall include the total cost of completing deliveries with enough equipment & personnel to meet this daily haul rate requirement within the allowable work hours.

Staff and equipment will be present at the Thomas Hill facility to load and scale trucks each day. MoDOT does not have open access to this facility and loading operations must be conducted between the hours of 8:00 AM and 4:00 PM, Monday through Friday. Therefore, haulers cannot have access to the facility or begin loading trucks until after 8:00 PM and must be completed with loading/scaling and clear of the facility before 4:00 PM daily.

Award of this bid will be on an "item by item" basis using the "lowest and best" principal of award. Therefore, it is not necessary to submit a bid for providing hauling services to every location listed, but instead to provide a "per ton" bid only for each location you would desire to service.

This bid is only for the hauling/delivery of materials. The vendor is not to include material costs in their bid for each location, since MoDOT District 2 will be obtaining the cinder materials directly from the supplier.

MoDOT District 2 reserves the right to increase or decrease the quantity of material to be delivered by up to twenty-five percent (25%) at the same unit price per ton. For truck delivery, the quantities for basis of payment are to be determined as provided in Section 310 of the 2004 Edition of the Missouri Standard Specifications for Highway Construction and any revisions thereto. Once deliveries are started at a MoDOT facility they should continue until that building is completed, before beginning at the next site.

District 2 will contact the awarded vendor(s) to determine availability/mobilization time required, coordinate schedules and determine starting dates. Bid prices must be firm until work is completed.

**VENDOR NAME:**

(Please enter your company name in this block)

## **PRICING SUBMISSIONS**

It is not necessary to submit pricing on all locations. Awards will be made on an "Item By Item" basis.

Qty	U/M	DELIVERY LOCATION & CURRENT BUILDING HOURS	UNIT PRICE (PER TON)	TOTAL COST EXTENSION
(Note: The building hours listed do not supersede the loading operation hours at the Thomas Hill facility as detailed herein. The 500 ton per day haul rate applies to all locations, which will allow all deliveries to each location to be completed in a single work day. If deliveries will need to be made outside the hours listed below for each facility in order to meet the 500 ton per day requirement, this must be communicated with the receiving facility supervisor and approved before hauling begins. This will allow MoDOT to adjust work schedules to accommodate, when and if possible):				
1487	Ton	Trenton Maintenance Building (Mon-Fri, 7:00-3:30)	\$	\$
368	Ton	Chillicothe Maintenance Building (Mon-Fri, 7:00-3:30)	\$	\$
609	Ton	Brookfield Maintenance Building (Mon-Fri, 7:00-3:30)	\$	\$

Indicate how soon you could be available to start work after receiving notification of award and receipt of order (notice to proceed or P.O.):	
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Facility	County	Address	Location
Brookfield	Linn	28877 Hwy. 11, Brookfield, MO 64628	Rt. 36 and Rt. 11 Jct.
Chillicothe	Livingston	1301 Mitchell Ave., Chillicothe, MO 64601	Rt. 36 – 1 mile east of Rt. 65
Trenton	Grundy	230 East Hwy 6, Trenton, MO 64683	Rt. 6 – 2 miles east of Rt. 65

### **Delivery – Additional Requirements**

It will be necessary for a representative of the Missouri Department of Transportation to be present when the material is delivered. No material will be accepted that has been dumped in the absence of the department's aggregate materials checker. No deliveries will be made during the period from 30 minutes before sundown to sunrise. No deliveries will be made on Saturdays, Sundays and holidays (February 12 – Lincoln's Birthday and February 21 – Washington's Birthday) unless specifically authorized by the engineer.

Currently all maintenance buildings are on 5-8 shifts. However, during construction/maintenance seasons, many maintenance buildings work 4-10 shifts and deliveries cannot be made on the "off" days for those buildings. Specific shift information for the applicable delivery locations will be provided to the awarded vendor when the purchase orders are issued or when the switch is made from 5-8 to 4-10 shifts.

### **Legal Weights**

Provisions of the Missouri Statutes relative to legal weights in regard to axle and gross weights, gross weights in relation to axle spacing and Supplementary Bridge limits all contained in Sections 304.180 and 304.190 RSMo are understood and will be abided by. The Department will not accept loads, which exceed legal weights.

### **Temporary Suspension of Work**

The District Engineer or a designated representative shall have authority to suspend work wholly or in part for such period or periods as may be deemed necessary when weather or other conditions are such that in the opinion of the engineer, the work may be done at a later time with advantage to the Department or for failure on the part of the Contractor to comply with any of the provisions of the Contract.

If the Department suspends the work for its own advantages and not because of the Contractor's failure to comply with the Contract, the Contractor will be allowed an equal number of calendar days after the completion date for the completion of the work. The Department may at its discretion give the Contractor an extension of time for completing the work where the Contractor incurs delays for causes beyond his control. Normal rainfall is not considered a cause qualifying for an extension of time.

# PREFERENCE IN PURCHASING PRODUCTS

DATE: \_\_\_\_\_

The bidders attention is directed to Section 34.076 RsMO 1986 which gives preference to Missouri corporations, firms, and individuals when letting contracts or purchasing products.

Bids/Quotations received will be evaluated on the basis of this legislation.

**All vendors submitting a bid/quotation must furnish ALL information requested below.**

## FOR CORPORATIONS:

State in which incorporated: \_\_\_\_\_

## FOR OTHERS:

State of domicile: \_\_\_\_\_

## FOR ALL VENDORS:

List address of Missouri offices or places of business:

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## THIS SECTION MUST BE COMPLETED AND SIGNED:

**FIRM NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**BY (signature required):** \_\_\_\_\_

**Federal Tax I.D. #:** \_\_\_\_\_ **if no Federal Tax I.D. # - list Social Security #:** \_\_\_\_\_

NOTE: For bid/quotation to be considered, the "Preference in Purchasing Products" form must be on file in the General Services (Procurement) Division and must be dated in the current calendar year.

## SIGNATURE AND IDENTITY OF BIDDER

The undersigned states that the correct LEGAL NAME and ADDRESS of (1) the individual Bidder, (2) each partner or joint venture (whether individuals or corporations, and whether doing business under a fictitious name), or (3) the corporation (with the state in which it is incorporated) are shown below; that (if not signing with the intention of binding himself to become the responsible and sole contractor) he is the agent of, and duly authorized in writing to sign for the Bidder or Bidders; and that he is signing and executing this (as indicated in the proper spaces below) as the proposal of a

( ) sole individual                                      ( ) partnership                                      ( ) joint venture

( ) corporation, incorporated under laws of state of \_\_\_\_\_

Dated \_\_\_\_\_.

Name of individual, all partners,  
or joint ventures:

Address of each:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

doing business under the name of:

Address of principal place of business in Missouri

\_\_\_\_\_  
(If using a fictitious name, show  
this name above in addition  
to legal names)

\_\_\_\_\_  
(If a corporation, show its name above)

ATTEST:                      (SEAL)

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Title

(NOTE: If the Bidder is doing business under a FICTITIOUS NAME, the Proposal shall be executed in the legal name of the individual, partners, joint ventures, or corporation, with the legal address shown, and REGISTRATION OF FICTITIOUS NAME filed with the Secretary of

State, as required by Sections 417.200 to 417.230, RS Mo. If the Bidder is a CORPORATION NOT ORGANIZED UNDER THE LAWS OF MISSOURI, it shall procure a CERTIFICATE OF AUTHORITY TO DO BUSINESS IN MISSOURI, as required by Section 351.570 and following, RS Mo. A CERTIFIED COPY of such Registration of Fictitious Name or Certificate of Authority to do Business in Missouri shall be filed with the Missouri Highways and Transportation Commission, as required by the Standard specifications, Sec 102.6.6 and 102.6.7.

## **Prohibition of Employment of Unauthorized Aliens**

Pursuant to RSMo 285.530 (1), no business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri.

As a condition for the award of any contract or grant in excess of five thousand dollars by the state or by any political subdivision of the state to a business entity, or for any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the business entity shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services.

Every such business entity shall sign an affidavit affirming that it does not knowingly employ any person who is unauthorized alien in connection with the contracted services. [RSMO 285.530 (2)] A copy of the affidavit referenced above is provided within this document.

E-Verify is an example of a federal work authorization program. Acceptable enrollment and participation documentation consists of a completed copy of the E-Verify Memorandum of Understanding (MOU).

For vendors that are not already enrolled and participating in a federal work authorization program and have the intent of doing business with MoDOT, the enrollment process should begin immediately by going to the web site below:

E-Verify is available at: [http://www.dhs.gov/xprevprot/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm).

**A copy of a completed E-Verify Memorandum of Understanding (from the link above) should be returned with your Request For Bid response along with the appropriate affidavit form.**

## **ADDITIONAL INFORMATION FOR VENDORS:**

To begin participation in the federal program takes some time on the internet (at the link above). Once the registration, tutorial and test on this site is passed, an electronically signed Memorandum of Understanding verifying program participation will be given.

**Copies of the Memorandum of Understanding will be requested with all future RFB's issued by MoDOT District 2. Therefore, It is important that the vendor prints the Memorandum of Understanding and keeps a copy because additional copies must be requested from Homeland Security if needed at a later date.**

**Only the first and signature pages of the Memorandum Of Understanding have to be attached to the appropriate affidavit on the following pages.**

**IF YOUR BUSINESS IS A SOLE-PROPRIETORSHIP OR PARTNERSHIP, THIS AFFIDAVIT FORM SHOULD BE COMPLETED AND RETURNED WITH YOUR RESPONSE TO THIS REQUEST FOR BID.**

**APPLICANT AFFIDAVIT FOR SOLE-PROPRIETORSHIP OR PARTNERSHIP**

(a separate affidavit is required for each owner and general partner)

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instruments, who being by me duly sworn, deposed as follows:

My name is \_\_\_\_\_, and I am of sound mind, capable of making this affidavit, and personally certify the facts herein stated, as required by Section 208.009, RSMo, for failure to provide affirmative proof of lawful presence in the United States of America:

I am the \_\_\_\_\_ of \_\_\_\_\_, which is applying for a public benefit (grant, contract, and/or loan) administered/provided by the Missouri Highways and Transportation Commission (MHTC), acting by and through the Missouri Department of Transportation (MoDOT).

I am classified by the United States of America as: (check the applicable box)

\_\_\_ a United States citizen. \_\_\_ an alien lawfully admitted for permanent residence.

I am aware that Missouri law provides that any person who obtains any public benefit by means of a willfully false statement or representation, or by willful concealment or failure to report any fact or event required to be reported, or by other fraudulent device, shall be guilty of the crime of stealing pursuant to Section 570.030, RSMo, which is a Class C felony for stolen public benefits valued between \$500 and \$25,000 (punishable by a term of imprisonment not to exceed 7 years and/or a fine not more than \$5,000 – Sections 558.011 and 560.011, RSMo), and is a Class B felony for stolen public benefits valued at \$25,000 or more (punishable by a term of imprisonment not less than 5 years and not to exceed 15 years – Section 558.011, RSMo).

I recognize that, upon proper submission of this sworn affidavit, I will only be eligible for temporary public benefits until such time as my lawful presence in the United States is determined, or as otherwise provided by Section 208.009, RSMo.

I understand that Missouri law requires MHTC/MoDOT to provide assistance in obtaining appropriate documentation to prove citizenship or lawful presence in the United States, and I agree to submit any requests for such assistance to MHTC/MoDOT in writing.

I acknowledge that I am signing this affidavit as a free act and deed and not under duress.

\_\_\_\_\_  
Affiant Signature

\_\_\_\_\_  
Affiant's Social Security Number or  
Applicable Federal Identification Number

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

**IF YOUR BUSINESS IS NOT A SOLE-PROPRIETORSHIP OR PARTNERSHIP,  
THIS AFFIDAVIT FORM SHOULD BE COMPLETED AND RETURNED WITH  
YOUR RESPONSE TO THIS REQUEST FOR BID.**

**WORKER ELIGIBILITY VERIFICATION AFFIDAVIT FOR ALL  
MHTC/MODOT CONTRACT AGREEMENTS IN EXCESS OF \$5,000**  
(for joint ventures, a separate affidavit is required for each business entity)

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be a person whose name is subscribed to this affidavit, who being by me duly sworn, deposed as follows:

My name is \_\_\_\_\_, and I am of sound mind, capable of making this affidavit, and personally certify the facts herein stated, as required by Section 285.530, RSMo, to enter into any contract agreement with the state to perform any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities:

I am the \_\_\_\_\_ of \_\_\_\_\_, and I am duly authorized, directed, and/or empowered to act officially and properly on behalf of this business entity.  
title business name

I hereby affirm and warrant that the aforementioned business entity is enrolled in a federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, and the aforementioned business entity shall participate in said program with respect to all employees working in connection to work under the within state contract agreement with the Missouri Highways and Transportation Commission (MHTC). I have attached documentation to this affidavit to evidence enrollment/participation by the aforementioned business entity in a federal work authorization program, as required by Section 285.530, RSMo.

In addition, I hereby affirm and warrant that the aforementioned business entity does not and shall not knowingly employ, in connection to work under the within state contract agreement with MHTC, any alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. § 1324a(h)(3).

I am aware and recognize that, unless certain contract and affidavit conditions are satisfied pursuant to Section 285.530, RSMo, the aforementioned business entity may be held liable under Sections 285.525 through 285.550, RSMo, for subcontractors that knowingly employ or continue to employ any unauthorized alien to work within the state of Missouri.

I acknowledge that I am signing this affidavit as a free act and deed of the aforementioned business entity and not under duress.

\_\_\_\_\_  
Affiant Signature

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

*[documentation of enrollment/participation in a federal work authorization program attached]*

**Liquidated Damages**

Deliveries are to be completed by April 29, 2011. In the event the successful Contractor fails to deliver the material within the time specified, the Department and the public will sustain damages because of such delay in delivery, the exact extent of which would be difficult to ascertain, and in order to liquidate such damage in advance it is agreed that the sum of two-hundred-fifty dollars (\$250.00) per day, per item, for each assessable calendar day on which the delivery has not been completed, is reasonable and the best estimate which the parties can arrive at as liquidated damages, and it is therefore agreed that said amount will be withheld from payments due the Contractor or otherwise collected from the Contractor as liquidated damages. Saturdays, Sundays, holidays and days whereas the Department has suspended work shall not be assessable days.

**Award**

Notification of award will be at the time the tabulation is posted to the Internet. It is the sole responsibility for all bidders to check the website for bid results.

**F.O.B.**

All materials bid are F.O.B. Destination (as outlined above). Freight/Hauling costs must be included in the unit price bid and not listed as a separate line item.

**VENDOR NOTES**

VENDORS MAY ALSO ATTACH OTHER PERTINENT OR SUPPORTING DATA WITH THEIR RESPONSE TO THIS RFB.

**Missouri Department of Transportation purchase orders must be issued to the invoicing company/address. If the invoicing company/address will be different from that listed in the vendor information section (below), the vendor should specify the "remit to" company/address in the vendor notes section (above).**

**VENDOR INFORMATION**

Vendor Name/Mailing Address:	Vendor Contact Information (including area codes):
	Phone #:
	Cellular #:
Email Address:	Fax #:
Printed Name of Responsible Officer or Employee:	Signature:
Is your company registered/certified with the State of Missouri as a (please circle): <div style="text-align: right;">           MINORITY BUSINESS ENTERPRISE (MBE)?    YES    NO            WOMEN BUSINESS ENTERPRISE (WBE)?    YES    NO         </div>	
If you would like information about MBE/WBE certification, please contact the Officer of Supplier of Workforce Diversity by calling 1-877-259-2963 or visit the following internet address: <a href="http://www.oswd.mo.gov">http://www.oswd.mo.gov</a>	
Vendors are encouraged to obtain minority business enterprise (MBE) and women business enterprise (WBE) participation in this work through the use of subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful participation for M/WBES. Vendors are encouraged to obtain 10% MBE and 5% WBE participation.	
Is your company a MISSOURI SERVICE-DISABLED VETERAN BUSINESS (please circle)?    YES    NO A service-disabled veteran is defined as any individual who is disabled as certified by the appropriate federal agency responsible for the administration of veteran's affairs. A service-disabled veteran business is defined in RSMo 34.044.	

**All responses to this Request For Bid should be submitted on this form and should be returned to the Buyer listed above at the District mailing address shown. Bids should be mailed or hand-delivered. Responses by fax cannot be accepted or considered for award.**



**Note: If any of the “Standard Solicitation Provisions” and “General Terms and Conditions” on the following pages conflict with the requirements outlined in this Request For Bid, the RFB requirements will supersede those below.**

### **STANDARD SOLICITATION PROVISIONS**

- a. The Missouri Department of Transportation (MoDOT) reserves the right to reject any or all bids/quotes/proposals, and to accept or reject any items thereon, and to waive technicalities. In case of error in the extension of prices in the bid/quote/proposal, unit prices will govern.
- b. All bids/quotes/proposals must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
- c. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown, within the State of Missouri.
- d. Time of delivery is a part of the consideration and, if not otherwise stated in the solicitation documents, must be stated in definite terms by the Bidder/Offeree and must be adhered to. If time varies on different items, the Bidder/Offeree shall so state.
- e. If providing bids/quotes/proposals for commodities, the Bidder/Offeree will state brand or make on each item. If bidding or proposing other than the make, model or brand specified, the manufacturer's name, model number or catalog number must be given.
- f. **For bids/proposals of \$25,000 or more**, no bids/proposals by telephone, telegram or telefax will be accepted.
- g. The date specified for the returning of bids/quotes/proposals is a firm deadline and all bids/quotes/proposals must be received at the designated office by that time. The Department does not recognize the U.S. Mail, Railway Express Agency, Air Express, or any other organization, as its agent for purposes of accepting proposals. All proposals arriving at the designated office after the deadline specified will be rejected.

### **GENERAL TERMS AND CONDITIONS**

#### **General Performance**

- a. Bidders are encouraged to obtain minority business enterprise (MBE) and women business enterprise (WBE) participation in this work through the use of subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful participation for M/WBEs. Bidders are encouraged to obtain 10% MBE and 5% WBE participation.
- b. This work is to be performed under the general supervision and direction of the Missouri Department of Transportation (MoDOT) and, if awarded any portion of the work, the Contractor agrees to furnish at his own expense all labor and equipment required to complete the work, it being expressly understood that this solicitation is for completed work based upon the price(s) specified and is not a solicitation for rental of equipment or employment of labor by MoDOT, and MoDOT is to have no direction or control over the employees used by the Contractor in performance of the work.

#### **Deliveries**

- a. Unless otherwise specified on the solicitation documents or purchase order, suppliers shall give at least 24 hours advance notice of each delivery. Delivery will only be received between the hours of 8:00 a.m. to 3:00 p.m., Monday through Friday. Material arriving after 3:00 p.m. will not be unloaded until the following workday. No material will be received on Saturday, Sunday or state holidays.
- b. If the prices bid herein include the delivery cost of the material, the Contractor agrees to pay all transportation charges on the material as FOB - Destination. Freight costs must be included in the unit price bid and not listed as a separate line item.
- c. Any demurrage is to be paid by the Contractor direct to the railroad or carrier.

#### **Nondiscrimination**

- a. The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. All solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of the Contractor's obligations under this contract and the Regulations, will be relative to nondiscrimination on the grounds of race, color, or national origin.
  - 1) Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, MoDOT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
    - i. withholding of payments to the Contractor under the contract until the Contractor complies, and/or,
    - ii. cancellation, termination or suspension of the contract, in whole or in part.

### **Contract/Purchase Order**

- a. By submitting a bid/quote/proposal, the Bidder/Offeror agrees to furnish any and all equipment, supplies and/or services specified in the solicitation documents, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the solicitation documents, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with any changes/additions, (2) the Contractor's proposal and/or submitted pricing, and (3) the MHTC's acceptance of the proposal and/or bid by purchase order or post-award contract.
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the Contractor must receive a properly authorized purchase order and/or notice to proceed.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the Contractor and the duly authorized representative of the MHTC, by a modified purchase order prior to the effective date of such modification. The Contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

### **Subcontracting**

- a. It is specifically understood that no portion of the material or any interest in the contract, shall be subcontracted, transferred, assigned or otherwise disposed of, except with the written consent of MoDOT. Request for permission to subcontract or otherwise dispose of any part of the work shall be in writing to MoDOT and accompanied by documentation showing that the organization which will perform the work is particularly experienced and equipped for such work.
- b. Consent to subcontract or otherwise dispose of any portion of the work shall not be construed to relieve the Contractor of any responsibility for the production and delivery of the contracted work and the completion of the work within the specified time.
- c. All payments for work performed by a subcontractor shall be made to the Contractor to whom the contract was awarded and the purchase order issued.

### **Invoicing and Payment**

- a. MoDOT is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Contractor may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A Project Tax Exemption Certificate will be furnished to the successful Bidder/Offeror upon request if applicable.
- b. Each invoice should be itemized in accordance with items listed on the purchase order and/or contract. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The Missouri Highways and Transportation Commission (MHTC) shall not make any advance deposits.
- d. The MHTC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any authorized quantity is subject to the MHTC's rejection and shall be returned at the Contractor's expense.
- e. The MHTC reserves the right to purchase goods and services using the state-purchasing card.

### **Applicable Laws and Regulations**

- a. The contract shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract.
- b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations. Prior to the issuance of a purchase order and/or notice to proceed, the Contractor may be required to submit to MoDOT a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
  - 1) Prior to the issuance of a purchase order and/or notice to proceed, all **out-of-state** Contractors **providing services** within the state of Missouri must submit to MoDOT a copy of their current Transient Employer Certificate from the Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
- c. The exclusive venue for any legal proceeding relating to or arising, out of the contract shall be in the Circuit Court of Cole County, Missouri.

### **Executive Order**

- a. The Contractor shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6<sup>th</sup>) day of March, 2007. This Executive Order, which promulgates the State of Missouri's position to not tolerate persons who contract with the state engaging in or supporting illegal activities of employing individuals who are not eligible to work in the United States, is incorporated herein by reference and made a part of this Agreement.
- 1) "By signing this Agreement, the Contractor hereby certifies that any employee of the Contractor assigned to perform services under the contract is eligible and authorized to work in the United States in compliance with federal law."
- 2) In the event the Contractor fails to comply with the provisions of the Executive Order 07-13, or in the event the Commission has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Commission reserves the right to impose such contract sanctions as it may determine to be appropriate, including but not limited to contract cancellation, termination or suspension in whole or in part or both.
- 3) The Contractor shall include the provisions of this paragraph in every subcontract. The Contractor shall take such action with respect to any subcontract as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance.

### **Preferences**

- a. In the evaluation of bids/quotes/proposals, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, RSMo. 34.076 and 34.350 to 34.359, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri. Such preference shall be given when quality is equal or better and delivered price is the same or less.
  - 1) If attached, the document entitled "**PREFERENCE IN PURCHASING PRODUCTS**" should be completed and returned with the solicitation documents.
  - 2) If attached, the document entitled "**MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT**" should be completed and returned with the solicitation documents. **Applies if bid is Twenty-Five Thousand Dollars (\$25,000.00) or more.**
- c. By virtue of statutory authority, RSMo 34.074, a preference will be given all contracts for the performance of any job or service to service-disabled veteran business either doing business as Missouri firms, corporations, or individuals; or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less or whenever competing bids, in their entirety, are comparable.
  - 1) If attached, the document entitled "**MISSOURI SERVICE-DISABLED VETERAN PREFERENCE**" should be completed and returned with the solicitation documents.
- d. In the event of a tie of low bids, the MHTC reserves the right to establish the method to be used in determining the award

### **Remedies and Rights**

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the MHTC of any existing or future right and/or remedy available by law in the event of any claim by the MHTC of the Contractor's default or breach of contract.
- b. The Contractor agrees and understands that the contract shall constitute an assignment by the Contractor to the MHTC of all rights, title and interest in and to all causes of action that the Contractor may have under the antitrust laws of the United States or State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or produced by the Contractor in the fulfillment of the contract with the MHTC.
- c. In the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MoDOT to enter into such litigation to protect the interests of the MHTC, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

### **Cancellation of Contract**

- a. The MHTC may cancel the contract at any time for a material breach of contractual obligations or for convenience by providing the Contractor with written notice of cancellation. Should the MHTC exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Contractor.
- b. If the MHTC cancels the contract for breach, the MHTC reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the MHTC deems appropriate and charge the Contractor for any additional costs incurred thereby.

### **Bankruptcy or Insolvency**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assigned the benefit or creditors, the Contractor must notify MoDOT immediately. Upon learning of any such actions, the MHTC reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the Contractor responsible for damages.

### **Inventions, Patents, and Copyrights**

- a. The Contractor shall defend, protect, and hold harmless the MHTC, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the Contractor's performance or products produced under the terms of the contract.

### **Inspection and Acceptance**

- a. No equipment, supplies, and/or services received by MoDOT pursuant to a contract shall be deemed accepted until MoDOT has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The MHTC reserves the right to return any such rejected shipment at the Contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The MHTC's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the MHTC may have.

### **Warranty**

- a. The Contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by MoDOT, (2) be fit and sufficient for the purpose expressed in the solicitation documents, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the MHTC's acceptance of or payment for said equipment, supplies, and/or services.

### **Status of Independent Contractor**

- a. The Contractor represents itself to be an independent Contractor offering such services to the general public and shall not represent itself or its employees to be an employee of the MHTC. Therefore, the Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold the MHTC, its officers, agents and employees harmless from and against any and all losses (including attorney fees) and damage of any kind related to such matters.

### **Indemnification**

- a. The Offeror shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Offeror's performance of its obligations under this Agreement.

# THANK YOU

## DATE: \_\_\_\_\_

FROM: \_\_\_\_\_ (Company Name)

\_\_\_\_\_  
(Contact Person)

\_\_\_\_\_ (Mailing Address)

\_\_\_\_ (City, State, Zip Code)

\_\_\_\_ (Office Phone #)

\_\_\_\_ (Cellular Phone #)

\_\_\_\_\_(Fax #)

\_\_\_\_\_ (Email Address)

( ) Product or service is not available or cannot meet the required specifications

( ) Other obligations – cannot make required deadline

( ) The delivery point or work location is outside of our territory or coverage/service area

( ) Other – Please explain below:

( ) Please keep our name on the bidder's list for future opportunities on this product or service.

( ) Please remove our name from your bidder's list for this product or service.

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